IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.275 OF 2004

Mrs Balvinder Kaur Purswani ... Petitioner

v/s

Libord Securities Ltd. and anr. ... Respondents

Mr S.S. Purohit i/b M/s Purohit and Co. for Petitioner.

Mr B.B. Saraf i/b Mr H.V. Chande for Respondents.

CORAM : D.K.DESHMUKH J.

DATE : 2ND AUGUST 2004

P.C.: -

1. By this petition, the petitioner challenges the award dated 11th March 2004 passed by the Arbitral Tribunal constituted under the Bombay Stock Exchange Bye-laws. A short ground on which the award is challenged is that the claim was barred by the law of limitation. The Arbitral Tribunal has recorded a finding that the cause of action for making reference arose on 3rd May 1999. Admittedly, the present reference in which award has been made, has been made on 1st January 2003. According to the award of the Arbitral Tribunal, the reference is made within the period of limitation because the claim, which was referred to the arbitration by the respondents on 21st March 2001, was decided by the Appellate Tribunal on 5th August 2003 and the time taken in those proceedings is liable to be excluded because of the provisions of section 14 of the Limitation Act. Now, admitted position before me is that in the earlier reference, the petitioner was not a party. Section 14 of the Limitation Act reads as under :-

> "14. Exclusion of time of proceeding bona fide in court without jurisdiction :-

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule

2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature."

. It is clear that apart from the fact that it should be the same claim in earlier proceedings, the claim must be against the same party. Admittedly, the claim in the earlier reference was not against the petitioner, therefore, provisions of section 14 of the Limitation Act will not operate to exclude the time taken in earlier proceedings. It was contended before me on behalf of the respondents that though admittedly the last entry was made on 3rd May 1999, in view of the first article of the schedule of the Limitation Act, as the present reference was for recovery of balance due on mutual, open and current account where there have been reciprocal demands between the parties, the period of limitation will start from the closure of the year in which last item admitted or proved is entered in the account, such year will be computed as in the account.

The submission is that the period of limitation will therefore start from 1st April 2000 and therefore, the reference is made within the period of limitation. Admittedly, this question was not raised before the Arbitral Tribunal. Whether the claim is for recovery of the balance due, whether the account was open or current are all questions of fact which have to be raised and decided by the Arbitral Tribunal. The question cannot be permitted to be raised for the first time in a petition filed under section 34 of the said Act. The next question would be if such contention is raised, what is the accounting year followed by the claimants. In the absence of enquiry into facts by the Arbitral Tribunal, such questions cannot be allowed to be raised in this Court for the first time. I find that the Arbitral Tribunal has wrongly held that the reference was made within the period of limitation. The award therefore is liable to be set aside as the claim was barred by the law of limitation. In the result therefore, petition succeeds and is allowed, the award impugned in the petition is set aside.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.